

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

No. 04-10525-WGY

DYNAMIC MACHINE WORKS, INC.,       )  
    Plaintiff,                                )  
  )  
    VS.    )  
  )  
MACHINE & ELECTRICAL                        )  
CONSULTANTS, INC.,                                )  
    Defendant.                                )

DEPOSITION OF KEVIN MCGINLEY,  
a witness called on behalf of the Defendant,  
taken pursuant to the provisions of the Federal  
Rules of Civil Procedure, before Susan L.  
Prokopik, Registered Merit Reporter and Notary  
Public in and for the Commonwealth of  
Massachusetts, at the offices of Dynamic Machine  
Works, Inc., 12 Suburban Park Drive, Billerica,  
Massachusetts, on Monday, September 20, 2004,  
commencing at 4:02 p.m.

MAGGIOLI REPORTING SERVICES, INC. (781) 356-2636

1 APPEARANCES:

2  
3  
4 LAW OFFICES OF JACK BRYAN LITTLE, P.C.

5 (By Jack Bryan Little, Esq.)

6 401 Andover Street

7 North Andover, Massachusetts 01845

8 for the Plaintiff.  
9

10  
11 SMITH ELLIOTT SMITH & GARMEY, P.A.

12 (By Keith R. Jacques, Esq.)

13 199 Main Street

14 P.O. Box 1179

15 Saco, Maine 04072

16 for the Defendant.  
17

18 ALSO PRESENT:

19  
20 Norman Crepeau  
21  
22  
23  
24

## I N D E X

Witness	Direct	Cross	Redirect	Recross
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KEVIN MCGINLEY				
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(By Mr. Jacques)	4			
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(By Mr. Little)		45		
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## E X H I B I T S

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P R O C E E D I N G S

(Defendant's Notice to Take Oral  
Deposition of Kevin McGinley marked Exhibit No.  
1.)

KEVIN MCGINLEY

having been satisfactorily identified and duly  
sworn by the Notary Public, was examined and  
testified as follows:

DIRECT EXAMINATION BY MR. JACQUES:

Q. Mr. McGinley, could you please state your full  
name for the record?

A. Kevin McGinley.

Q. Where do you reside?

A. Seabrook, New Hampshire.

Q. You're employed by Dynamic Machine Works?

A. That's correct.

Q. And the deposition today is being taken in the  
conference room of Dynamic Machine at 12 Suburban  
Park Drive in Billerica, Massachusetts?

A. That is correct.

Q. Mr. McGinley, let me hand you a document that we

1 marked as McGinley Exhibit 1 and ask you if  
2 you've seen that before just now.

3 A. No.

4 Q. Okay. I'm going to represent to you that that's  
5 your notice to take your deposition in this case.  
6 The notice requires that you bring with you  
7 certain designated documents in the notice that  
8 are identified in paragraphs one through four.  
9 Now, I understand from conversations before  
10 earlier depositions that Dynamic's attorney has  
11 provided me with all of the documentation  
12 contained in Dynamic's files relating to this  
13 particular transaction, other than privileged  
14 documents.

15 What I would like to know is whether  
16 you maintain any independent or separate records  
17 regarding Dynamic's purchase of the Johnford  
18 lathe.

19 A. No.

20 Q. Any records that you would have reviewed or  
21 prepared would be part of the general Dynamic  
22 file with respect to this purchase?

23 MR. LITTLE: Except for work-product.

24 Q. Except for work-product.

1 A. Yes.

2 Q. Okay. While I'm giving speeches here, just for  
3 the record, during the course of this deposition,  
4 I will be referring to certain exhibits. And by  
5 agreement, since they've already been marked  
6 during Ven Fonte's deposition, we'll refer to  
7 them as Fonte exhibits, which will be attached to  
8 Mr. Fonte's exhibit.

9 MR. LITTLE: And not attached to Mr.  
10 McGinley's.

11 MR. JACQUES: And not attached to Mr.  
12 McGinley's.

13 Q. How long have you worked at Dynamic Machine  
14 Works?

15 A. This is my second tour of duty at Dynamic  
16 Machine. I have been employed since December of  
17 2001.

18 Q. Since December, 2001, what has been your position  
19 with Dynamic?

20 A. My title is project manager. My position entails  
21 a great variety of different tasks.

22 Q. Can you briefly summarize the tasks that you're  
23 responsible for here at Dynamic?

24 A. Procurement of raw materials, contract review. I

1 fill in for sales when those gentlemen are not  
2 available. And different -- tasks that don't  
3 fall within the -- we'll call them ordinary  
4 course of -- course of an ordinary business day.

5 For instance, capital acquisitions. I  
6 do, you know, work with Ven pretty closely on  
7 those.

8 Q. Okay. You mentioned it was your second tour of  
9 duty. During what period did you serve during  
10 your first tour of duty?

11 A. I believe it was '94 to '98.

12 Q. Was your role at Dynamic from 1994 to 1998  
13 similar to your role from 2001 to the present?

14 A. No.

15 Q. What did you do for Dynamic during your first  
16 tour of duty?

17 A. I was the manufacturing manager.

18 Q. And what does that involve?

19 A. Basically overseeing the day-to-day operation of  
20 the manufacturing side of the business.

21 Q. As project manager, who do you report to?

22 A. Mr. Fonte. Ven.

23 Q. Why did you leave Dynamic in 1998?

24 A. I left for what I thought was a better

1 opportunity.

2 Q. And where was that opportunity?

3 A. Kittery, Maine.

4 Q. With what company?

5 A. It was Watts Fluid Air.

6 Q. W A T T S. How long did you work for Watts Fluid  
7 Air?

8 A. From '98 to 2001.

9 Q. When you left Watts Fluid Air, was that to come  
10 work directly at Dynamic?

11 A. No. I was laid off.

12 Q. When were you laid off at Watts?

13 A. End of October, 2001.

14 Q. Was your next employment with Dynamic after that?

15 A. There was a period that I spent -- actually  
16 trying to sell machine tools for Norman between  
17 those two dates.

18 Q. For Norman at MECI?

19 A. Yes.

20 Q. How long did you sell machine tools on behalf of  
21 MECI?

22 A. Three or four weeks.

23 Q. Why did you decide to stop selling machine tools  
24 for MECI?



1 A. I was -- wasn't very good at it, let's say. I  
2 never sold a machine.

3 Q. Didn't give yourself a whole lot of time.

4 A. Well, no. I mean, the economy at the time was  
5 pretty bad. It was right after 9/11 and there  
6 weren't a lot of people buying equipment.

7 Q. Okay.

8 (Off the record.)

9 Q. When did you graduate from high school? When did  
10 you leave high school?

11 A. 1979.

12 Q. Where did you go to high school?

13 A. Winnacunnet High School.

14 Q. Could you spell that for the court reporter?

15 A. No, sir. W I N N A C U N N E T T.

16 Q. Did you attend any further schooling when you  
17 left high school in 1979?

18 A. Not immediately.

19 Q. What did you do upon graduation from high school?

20 A. I went to work full-time.

21 Q. Where did you work?

22 A. I worked -- probably six or seven different jobs  
23 between 1979 and 1984. Bartender. Security  
24 guard. Shipper/receiver.

1 Q. Between 1979 and 1984, did you work for any  
2 companies involved in the same type of work as  
3 either MECI or Dynamic?

4 A. No.

5 Q. Is 1984 when you went back to school?

6 A. No. 1984 I went to work for a company called  
7 Gould Incorporated in Newburyport, Massachusetts.

8 Q. What did they do?

9 A. They're a manufacturer of circuit protection  
10 devices.

11 Q. How long did you work for them?

12 A. Until 1993.

13 Q. What did you do in 1993?

14 A. I went to work for a company called Granite State  
15 Manufacturing.

16 Q. How long did you work for them?

17 A. About a year.

18 Q. And what sort of manufacturing do they do?

19 A. It was a machine shop type work.

20 Q. When you left Granite State, was that to come  
21 here to Dynamic?

22 A. Yes.

23 Q. Have you obtained any degrees after high school?

24 A. Yes.

1 Q. What degrees have you obtained after high school?

2 A. I have an Associate's degree in machine tool  
3 process.

4 Q. What does that involve?

5 A. That's a two-year course in the application of  
6 machine tools in the metal cutting industries.

7 Q. Where did you get that degree?

8 A. New Hampshire Technical College.

9 Q. And when did you get it?

10 A. 1991, I believe.

11 Q. Any other degrees?

12 A. I have a Bachelor of Science in technical  
13 management.

14 Q. Where did you get that?

15 A. New Hampshire College.

16 Q. When did you get that?

17 A. '94.

18 Q. Any other degrees?

19 A. Yeah. I have a Master's degree in business  
20 administration.

21 Q. And where did you get that?

22 A. New Hampshire College.

23 Q. When did you get that?

24 A. 1999.

1 Q. Any other degrees?

2 A. No.

3 Q. Other than yourself, Ven Fonte, Nick Fonte and  
4 John Heymans, are there any other individuals  
5 within Dynamic who have knowledge regarding  
6 Dynamic's purchase of the Johnford lathe which  
7 gave rise to this lawsuit?

8 A. I'm not sure I understand the question.

9 Q. My understanding is that Ven Fonte, Kevin  
10 McGinley, Nick Fonte and John Heymans were all  
11 involved in the decision to purchase the Johnford  
12 lathe from Machine & Electrical Consultants.

13 A. That's correct.

14 Q. Other than those four individuals, were any other  
15 individuals involved in the decision-making  
16 process to purchase the Johnford lathe from MECI?

17 A. Principally it was the four of us. Whether or  
18 not -- "hey, what do you think of this" to anyone  
19 else, as a kind of a passing thing, I can't say  
20 for sure but it was principally the four of us.

21 Q. At the time that the decision was made to  
22 purchase the Johnford lathe from MECI, had  
23 Dynamic considered other machines or compared  
24 other machines to the Johnford lathe?

1 A. Yes.

2 Q. And do you have a specific recollection of what  
3 other machines were being considered by Dynamic?

4 A. I believe that we considered a Mazak product. I  
5 believe we considered a product by a company  
6 called Takang. And perhaps a product from  
7 Daewoo.

8 Q. Do you have any knowledge as to why Dynamic  
9 ultimately agreed to purchase the Johnford lathe  
10 as opposed to the other three manufacturers that  
11 you have identified?

12 A. I think in general we felt it was the best value.

13 Q. Value based upon price or value based upon  
14 performance or a combination of both?

15 A. A combination.

16 Q. Is there anything that the Johnford lathe, was  
17 there anything the Johnford lathe could do that  
18 the Mazak, Takang or Daewoo machines could not  
19 do?

20 A. I don't believe either of the other three offered  
21 the length that the Johnford had.

22 Q. And my understanding is the Johnford lathe had a  
23 length of --

24 A. I think it was 275 millimeters or 270. 275.

1 Q. Inches?

2 A. No. It's millimeters. It was 21 feet basically.

3 Q. Okay.

4 A. Seven meters I think it was.

5 Q. Okay. Why did Dynamic want to purchase -- my  
6 understanding is that the other machines on the  
7 floor were substantially shorter from the length  
8 perspective than this Johnford lathe, correct?

9 A. Yes.

10 Q. Why did Dynamic decide that it needed a machine  
11 that had a capability to go to 21 feet?

12 A. As we're currently configured, you know, Dynamic  
13 Machine's capability stopped at ten feet. Our  
14 flowforming machines have the capability to  
15 produce pieces up to 21, 22, 23 feet long. So  
16 there's a big gap there. So the gap between ten  
17 feet and 22 feet was something that we would have  
18 liked to have filled in one fell swoop.

19 In particular, there's a Tomahawk motor  
20 case, a Tomahawk case that we're trying to get a  
21 contract for. And that was one of the other  
22 reasons.

23 Q. Is Dynamic still trying to get the Tomahawk case  
24 contract?

1 A. Yes.

2 Q. What's the status of that at this point?

3 A. I don't know.

4 Q. Okay. In December of 2002, was Dynamic closer to  
5 getting the Tomahawk contract than it is now, for  
6 example?

7 A. I don't know.

8 Q. Have you been involved in the discussions or the  
9 negotiations regarding obtaining the Tomahawk  
10 contract?

11 A. That's mostly a sales function.

12 Q. And who would that be? Ven?

13 A. Ven and Matthew.

14 Q. Did the Mazak, Takang and Daewoo machines have  
15 the same tolerance specifications as the Johnford  
16 lathe?

17 A. Did they have the same tolerance specification?

18 Q. Correct. Could they all cut within plus or minus  
19 five-tenths?

20 A. I don't know.

21 Q. Do you know if they all had positional accuracy  
22 of plus or minus five-tenths?

23 A. I don't know.

24 Q. Were you involved in the actual discussions with

1 Norm Crepeau regarding purchasing the Johnford  
2 lathe sometime in late December, 2002, early  
3 January, 2003?

4 A. Some of them, yes.

5 Q. And then my understanding is that a purchase  
6 order was issued back in December, 2002, correct?

7 A. Yes.

8 Q. Let me show you a document that we have already  
9 marked as Fonte Exhibit 4 and ask you if that's a  
10 copy of the purchase order that was issued with  
11 respect to the Johnford lathe.

12 A. I don't believe this is for the actual lathe that  
13 we ended up buying.

14 Q. That's for an earlier version?

15 A. Yeah. This is a previous revision I would say.  
16 This purchase order.

17 Q. Let me show you Fonte Exhibit 3.

18 A. Mm-hmm.

19 Q. Which is -- have you seen that before today?

20 A. I believe I have, yes.

21 Q. And can you tell me what that is?

22 A. It's a description of a Johnford HT275G  
23 heavy-duty turning center.

24 Q. And is that the --



1 A. It's a proposal.

2 Q. Is that the lathe that ultimately Dynamic decided  
3 to purchase?

4 A. I believe the lathe that we ultimately decided to  
5 purchase was the HT275G.

6 Q. Okay. Let me show you a document that we  
7 previously marked as Fonte Exhibit 5.

8 A. Mm-hmm.

9 Q. Which is a document that's signed by you on page  
10 two, correct?

11 A. Yes.

12 Q. And is that the sort of a follow-up purchase  
13 order for the Johnford lathe that ultimately  
14 Dynamic purchased?

15 A. I believe it to be, yes.

16 Q. Okay. Do you have any reason to believe that  
17 there was any subsequent purchase order, other  
18 than this January 13, 2003 letter that's dated  
19 Fonte Exhibit 5?

20 A. I don't believe there was any --

21 Q. And that's --

22 A. -- subsequent purchase order issued, no.

23 Q. Apologize for interrupting.

24 That letter references the earlier

1 purchase order that I showed you that was marked  
2 as Exhibit 4, correct?

3 A. Yes.

4 Q. Okay. Item number two -- and I'm focusing on  
5 Exhibit 5 --

6 A. Okay.

7 Q. And I apologize for jumping around. If I jump  
8 around and you get confused, please stop me but  
9 I'm sensitive to the time. I'm just trying to  
10 keep things moving.

11 A. Mm-hmm.

12 Q. With respect to Exhibit 5, paragraph one  
13 addresses the Johnford lathe itself, correct?

14 A. That's correct.

15 Q. The second paragraph talks about two autoblock  
16 chucks. Do you see that?

17 A. Yes.

18 Q. One to be installed on a Mazak Slant 60?

19 A. Yes.

20 Q. And is that a Mazak that was already on the floor  
21 back in January of 2003?

22 A. Yes.

23 Q. And was that chuck in fact installed on the  
24 Mazak?

1 A. I believe it was.

2 Q. Okay. And do you know if it's still located on  
3 that Mazak?

4 A. I believe it to be, yes.

5 Q. It also addresses a second chuck to be installed  
6 on the Johnford lathe. Do you see that?

7 A. Yes.

8 Q. Do you know if that chuck is still installed on  
9 the Johnford lathe?

10 A. I don't know that.

11 Q. Do you know whether there have been discussions  
12 about removing it from the Johnford lathe and  
13 installing it on the Mazak that subsequently was  
14 purchased by Dynamic?

15 A. I don't know if there have been discussions.

16 Q. Okay. If it's been removed, you weren't involved  
17 in that process?

18 A. No, I wasn't.

19 Q. Okay. Paragraph three of that or item three of  
20 that letter on page two talks about a steady  
21 rest. Correct?

22 A. Yes.

23 Q. My understanding is that steady rests are used on  
24 a variety of the machines on the floor at this

1 business; is that correct?

2 A. Mm-hmm.

3 Q. Yes?

4 A. Yes.

5 Q. With respect to this particular steady rest  
6 that's referenced on Exhibit 5, do you know if  
7 that steady rest is interchangeable with any of  
8 the other machines on the floor?

9 A. I don't know.

10 Q. Once the January or Exhibit 5 was delivered to  
11 MECI, can you tell me what involvement, if any,  
12 you had with respect to the Dynamic's purchase of  
13 the Johnford lathe, from January of 2003 through  
14 -- throughout 2003?

15 A. For the most part my responsibility was to --  
16 just to keep -- keep the people at Dynamic  
17 appraised of the status of the machine, when it  
18 would be delivered. I tried to keep  
19 communications regarding what may have been  
20 construed as problems with the rental machine.

21 Just basically to keep an eye on the  
22 delivery of the machine, when it was going to be  
23 here and just to communicate with Norman  
24 regarding what we may have seen as problems with

1 the other machine and what -- to let Norman know  
2 what we expected of the larger machine.

3 Q. I'm showing you a document which is marked as  
4 Exhibit 7. You talked about advising Mr. Crepeau  
5 regarding the problems that you were having with  
6 the rental machine.

7 A. Mm-hmm.

8 Q. Does Exhibit 7 address the issues that Dynamic  
9 had with the rental machine?

10 A. It does address those issues.

11 Q. Other than the issues that are identified in  
12 Exhibit 7, did Dynamic experience any other  
13 problems with the rental machine that you brought  
14 to the attention of MECI?

15 A. Can you repeat the question?

16 Q. Other than the three items identified in Exhibit  
17 7, were any other problems that Dynamic had with  
18 the rental machine communicated to MECI?

19 A. Not that I know of.

20 Q. At some point prior to the delivery of the  
21 Johnford lathe, my understanding is that MECI  
22 faxed to your attention an accuracy inspection  
23 report from Johnford. Do you recall that?

24 A. Yes.

1 Q. Let me show you a document that we've marked as  
2 Fonte Exhibit 12.

3 A. Mm-hmm.

4 Q. Is that the accuracy report that you received  
5 from MECI?

6 A. Looks like it.

7 Q. Do you recall when you would have received that  
8 accuracy report?

9 A. I don't recall but there is a date on the top of  
10 this document.

11 Q. Which is what?

12 A. July 29.

13 Q. Do you have any reason to believe that you would  
14 not have received that on or before January 29th?

15 MR. LITTLE: July 29.

16 Q. July 29th, yes.

17 A. No. I have no reason to believe that.

18 Q. When you received the accuracy report, what, if  
19 anything, did you do with it?

20 A. I showed a copy to Ven and I showed a copy to  
21 John Heymans. Actually, I may have made them  
22 copies.

23 Q. Did you personally review the inspection report  
24 to see if the report complied with the

1 specifications that previously had been provided  
2 to Dynamic?

3 A. Can you repeat that?

4 Q. In addition to passing on the inspection report  
5 to John Heymans and Ven Fonte, did you review the  
6 inspection report?

7 A. I reviewed it in the sense that I was trying to  
8 get -- because it's very difficult. It's not  
9 very clear. Basically I reviewed it and I found  
10 that it wasn't legible enough to make a  
11 determination one way or the other what they were  
12 saying here.

13 Q. And what led you to conclude that it wasn't  
14 legible enough for you to make a determination  
15 regarding what they were saying?

16 A. Due to the fact that it was illegible.

17 Q. Okay. What makes it illegible?

18 A. I mean, you can't read any of this stuff. You  
19 can't tell what they're trying to say here. I  
20 mean, there's a graphic illustration of how each  
21 test is conducted and -- I can't for the life of  
22 me figure out what this is a picture of.

23 Q. And you're pointing to the third illustration --

24 A. Second page, third illustration down.

1 Q. Under test item number one?

2 A. Yeah.

3 Q. Did you communicate to MECI that Dynamic was  
4 dissatisfied with the inspection report?

5 A. We're going back a year and a half or a year now  
6 and I can't remember the exact conversation I had  
7 with Norman. I believe what I said was, you  
8 know, That's -- the inspection report is what it  
9 is but we're going to have to meet what it calls  
10 for on the purchase order when the machine  
11 arrives, not when it's in Taiwan.

12 Q. Is that something that you communicated with Mr.  
13 Crepeau orally as opposed to by E-mail or in  
14 writing?

15 A. I believe so.

16 Q. Did Dynamic ever accept the inspection report  
17 that you're aware of?

18 A. No.

19 Q. Do you know if anybody else at Dynamic requested  
20 that Johnford provide, using your term, more  
21 legible, a more legible report?

22 A. I don't know.

23 Q. When Dynamic originally decided to purchase the  
24 Johnford lathe, do you know whether Dynamic



1 contemplated going to Taiwan to inspect this  
2 machine prior to being shipped to the United  
3 States?

4 A. I know there were discussions.

5 Q. And who were those discussions with?

6 A. With Norman.

7 Q. Do you know why ultimately that inspection didn't  
8 take place?

9 A. I believe that there was -- there wasn't really  
10 time to do that. I believe there was also some  
11 concern that at the time the SARS epidemic was  
12 going on and unnecessary travel to Taiwan was not  
13 something that anyone took lightly.

14 Q. Did MECI or Johnford attempt to dissuade Dynamic  
15 from inspecting the machine in Taiwan?

16 A. No.

17 Q. My understanding is that the Johnford lathe was  
18 delivered to Dynamic on October 9, 2003; is that  
19 correct?

20 A. That sounds about right. I don't know exactly  
21 what the date was but that sounds about right.

22 Q. Do you have a recollection as to how long after  
23 delivery of the machine that MECI began  
24 commissioning the machine?

1 A. I'm not sure.

2 Q. Were there certain steps that Dynamic was  
3 required to perform before the commissioning of  
4 the machine could occur?

5 A. I believe it had to be lagged to the floor.

6 Q. Was that something that Dynamic was required to  
7 do?

8 A. I think so.

9 Q. Do you know how long that process took?

10 A. I don't know for sure.

11 Q. Other than lagging the machine to the floor, did  
12 Dynamic have to undertake any other steps in  
13 order to accept delivery of the Johnford lathe?

14 MR. LITTLE: I'm sorry. I don't mean  
15 to keep interrupting. Do you mean something  
16 different between accepting delivery and  
17 commissioning?

18 MR. JACQUES: Yes.

19 Q. Prior to commissioning, prior to MECI beginning  
20 the commissioning process for the machine, what,  
21 if any, responsibilities did Dynamic have to  
22 prepare this machine for commissioning?

23 A. Power had to be brought to it. I believe air had  
24 to be brought to it. And it had to be lagged to

1 the floor.

2 Q. With respect to power being brought to the  
3 machine, my understanding is that Dynamic hired  
4 an outside electrician to perform the work?

5 A. Yes.

6 Q. Do you know if that electrician provided you with  
7 an invoice for the work that he did in providing  
8 electrical power to the machine?

9 A. I don't know. I don't know.

10 Q. Do you know what the cost was of providing  
11 electricity to the machine?

12 A. No. I don't know.

13 Q. Do you know who within Dynamic would know what  
14 the cost was of providing electricity to the  
15 machine?

16 A. I would think Christine would.

17 Q. Christine is --

18 A. Donovan.

19 Q. Who is she?

20 A. She's our controller.

21 MR. JACQUES: Would you agree to just  
22 provide me with a -- whatever the invoice or  
23 whatever is that was paid to a gentleman that I  
24 won't try to pronounce his name at this point?

1 The electrical work.

2 MR. LITTLE: Invoice for electrical.

3 Yes, I'll provide that.

4 Q. Sort of getting ahead of myself. While we're  
5 talking about the electrical component, sometime  
6 in December of 2003, I understand that the  
7 machine was moved by Dynamic from one location to  
8 the other within the shop, correct?

9 A. I'm not sure when that occurred but I know it has  
10 been moved.

11 Q. Around that same time, Dynamic purchased a Mazak  
12 to perform -- I won't say the same work because  
13 it was a shorter work but to perform a lot of the  
14 work that the Johnford lathe could have done,  
15 albeit on a much smaller scale?

16 A. Yes.

17 Q. The electrical work that was done, was that used  
18 in connection with the Mazak that was brought  
19 onto the shop?

20 A. I don't know. I'm not sure that they have the  
21 same power requirements or location of the power,  
22 whether they were the same spot or -- I'm not  
23 sure they could be used.

24 Q. You don't know one way or the other?

1 A. Don't know one way or the other.

2 Q. Mr. Fonte's affidavit in this case has a  
3 reference to installation labor of \$21,029. Is  
4 that a figure that you provided to him regarding  
5 the cost of installing the lathe?

6 A. Probably, yes.

7 Q. Do you know what labor was performed that made up  
8 the \$21,029 cost to Dynamic?

9 A. There's the electrical. There's air. There's  
10 preparation of the floor where the machine is  
11 going. We also had to open up an entryway to  
12 make it wide enough to fit the Johnford.

13 Q. Let me show you Exhibit 16, which is Mr. Fonte's  
14 affidavit and specifically paragraph 17 of that  
15 affidavit. With respect to the installation  
16 labor, there's the number of \$21,029.

17 A. Mm-hmm.

18 Q. Do you know if a breakdown of that labor expense  
19 was ever maintained by anybody at Dynamic?

20 A. I don't know.

21 Q. With respect to the rigger expense of \$5,800, do  
22 you know if there is an invoice that reflects the  
23 expense associated with the rigger and what I  
24 understand is moving the machine from one

1 location to another?

2 A. I believe there is, yes.

3 MR. JACQUES: And Jack, if that has not  
4 been provided to me, would you agree to provide  
5 it to me?

6 MR. LITTLE: Sure.

7 Q. With respect to the materials expense of \$1,644,  
8 do you know what materials were purchased that  
9 cost Dynamic \$1,644?

10 A. I don't know entirely what makes up that amount,  
11 no. I know that some portion of that is a piece  
12 of material that was bought for test cuts. I  
13 don't know what the rest of it is.

14 Q. Okay.

15 MR. LITTLE: Can we go off the record a  
16 second?

17 (Off the record.)

18 Q. The electrical we've already talked about and  
19 Dynamic's attorney has agreed to provide that to  
20 me. The next entry is a building modifications  
21 of \$7,000. Do you know if that was an actual  
22 invoice that Dynamic received in connection with  
23 modifications to the building?

24 A. I don't know that, no.

1 Q. Do you know if there is an invoice out there that  
2 addresses any modifications that were done to the  
3 building?

4 A. I do not know that, no.

5 MR. JACQUES: Same request?

6 MR. LITTLE: Yes. That will be John  
7 Sorbello.

8 MR. JACQUES: Is the contractor?

9 MR. LITTLE: Right. S O R B E L L O.

10 Q. Can you tell me what building modifications Mr.  
11 Sorbello did for delivery of the lathe?

12 A. There is one doorway that the lathe had to go  
13 through that was not wide enough. Consequently,  
14 he had to widen that doorway.

15 Q. And I understand that that doorway has remained  
16 in the widened state as opposed to being brought  
17 down to its original state; is that correct?

18 A. Yes, it has.

19 Q. Has Dynamic benefited from having a wider  
20 entrance to its building?

21 MR. LITTLE: Objection. Vagueness.

22 You can answer it.

23 A. I don't know.

24 Q. Do you know how much the door was widened?

1 A. No, I don't.

2 Q. Were you involved in the commissioning process  
3 between the date of delivery in October of 2003  
4 up until December of 2003?

5 A. Not -- not intricately involved. I would say my  
6 interest in the process, in the commissioning  
7 process brought me over there to look at what was  
8 going on and things but I was not really involved  
9 in the technical aspect of commissioning the  
10 machine.

11 Q. During -- your interest bringing you there, did  
12 that also include your having conversations with  
13 individuals that were involved in the  
14 commissioning process?

15 A. Yes.

16 Q. Who did you speak to regarding the commissioning  
17 of the machine?

18 A. I can't remember who the technician's name that  
19 was working for Norm. I spoke with him on  
20 occasion and I spoke with Jack Grosberg on  
21 occasion and I spoke with John and Nick on  
22 occasion. More in passing. How is it going?  
23 Are we making progress?

24 Not a lot of specifics involved there.



1 Q. Were you provided with the test results being  
2 performed by either DRW or Oxford Engineering as  
3 part of the commissioning process?

4 A. Not while the commissioning was going on.

5 Q. At any time during the commissioning process, did  
6 anyone ever tell you that the machine could not  
7 meet specifications?

8 A. I don't believe anybody ever told me that during  
9 the commissioning process.

10 Q. Did anyone at any time -- actually, step back.  
11 When you refer to the commissioning process, what  
12 time period are you talking about?

13 A. Between the time the machine was delivered and  
14 the time that the work stopped on it.

15 Q. And my understanding is the work stopped on the  
16 machine sometime around December 9 or 10 of 2003?

17 A. That sounds about right.

18 Q. Who did you speak with after December 10, 2003  
19 who told you that this machine could not meet the  
20 specifications?

21 A. I don't recall one particular individual telling  
22 me that.

23 Q. Do you recall the names of any of the individuals  
24 telling you that?

1 A. I mean, it was a general topic of conversation.

2 Q. Within Dynamic?

3 A. Yes.

4 Q. Did anybody not associated with Dynamic ever tell  
5 you that the machine could not meet  
6 specifications?

7 A. During the commissioning or afterwards?

8 Q. At any time.

9 A. I believe that afterwards Jack Grosberg said that  
10 he was convinced that the machine would not be  
11 able to meet specifications.

12 Q. When did he tell you that?

13 A. I would have to say it was early 2004. I can't  
14 nail it down any closer than that.

15 Q. And by early 2004, Jack Grosberg was no longer  
16 working on this machine, correct?

17 A. Correct.

18 Q. What was the occasion by which -- how was it that  
19 you spoke to Jack Grosberg in 2004 after he was  
20 done testing the machine?

21 A. I think we were trying to get an idea from him  
22 whether he -- whether or not he thought that the  
23 machine could be brought into specification.

24 Q. "We" being you and who else?

1 A. I think Ven was there and maybe Nick or John.

2 Q. At that point, your attorney had or Dynamic's  
3 attorney had already sent a letter to MECI  
4 indicating that Dynamic didn't want MECI to  
5 continue to work on commissioning this machine,  
6 correct?

7 A. I believe that's correct.

8 Q. And the machine already had been moved from the  
9 location where it had been worked on to another  
10 location within the shop, correct?

11 A. I don't know that.

12 Q. Other than Jack Grosberg indicating to you that  
13 he was convinced that the machine could not meet  
14 specifications sometime in 2004, has anyone else  
15 ever told you that this machine could not meet  
16 specifications?

17 A. Not that I recall.

18 Q. And when Jack Grosberg communicated to you that  
19 he was convinced that the machine could not meet  
20 specifications, did he tell you what  
21 specifications he didn't feel the machine could  
22 meet?

23 A. He didn't feel that the machine could meet the  
24 positional accuracy of .0005.

1 Q. What is your understanding regarding what  
2 positional accuracy is?

3 A. My understanding is that if you program a point  
4 from A to B, that within that line, the machine  
5 doesn't vary more than a half a thousandth.

6 Q. Is it your position that positional accuracy is  
7 different than cutting accuracy?

8 A. I consider them one in the same.

9 Q. As you sit here, do you have a specific  
10 recollection of Jack differentiating whether he  
11 was talking about positional accuracy versus  
12 cutting accuracy when he was telling you that the  
13 machine could not meet specifications?`

14 A. No.

15 Q. Did Mr. Grosberg indicate to you what he was  
16 relying upon in making the assertion that the  
17 machine could not meet specifications?

18 A. Did he communicate that to me?

19 Q. Correct.

20 A. I believe he communicated that on the basis of  
21 what he had seen while he was here with his  
22 equipment and his experience. I believe that's  
23 what he used to draw that conclusion.

24 Q. Do you know if Mr. Grosberg made his or performed

1 his test before or after any parts had been cut  
2 on the machine?

3 A. I believe he made his measurement prior to any  
4 parts being cut on the machine.

5 Q. Do you have a recollection as to when Dynamic cut  
6 any parts on this machine?

7 A. The only part ever cut on the machine was the  
8 test cut piece that we bought. And I believe  
9 that was done after Jack had worked for a while  
10 on the machine.

11 Q. The test part cut being the part that resulted in  
12 the material charge of \$1,600?

13 A. I believe so, yes.

14 Q. I'm going to show you a document that's marked as  
15 Exhibit 15.

16 A. Mm-hmm.

17 Q. Have you seen that before today?

18 A. Yes.

19 Q. Okay. And Exhibit 15 -- I just ask you to flip  
20 through it -- is actually five pages. Three of  
21 which I understand were prepared by Dynamic and  
22 two of which are some test results from Oxford  
23 dated I believe it's November 25, 2003.

24 A. Okay.

1 Q. With respect to the first three pages, did you  
2 participate in the preparation of those first  
3 three pages?

4 A. No.

5 Q. Have you seen those pages prior to today?

6 A. Yes.

7 Q. And have you discussed those pages with anyone,  
8 either inside or outside of Dynamic?

9 A. Yes.

10 Q. With respect to individuals not associated with  
11 Dynamic, who, if anyone, have you discussed those  
12 documents with?

13 A. I don't believe I've discussed them with anyone  
14 not associated with Dynamic.

15 Q. Do you know if the test cut occurred before  
16 November 25, 2003?

17 A. I don't know that for a fact.

18 Q. Are there any records where you could determine  
19 when the test cut was performed?

20 A. I think the only thing that I could do is look at  
21 the purchase order for the test cut piece and see  
22 if it was placed after 11/25. If so, that would  
23 tell us that this was done before the test cut.

24 Q. Do you have any knowledge of one of Dynamic's

1 employees damaging the tailstock of the Johnford  
2 lathe during the performance of the test cut?

3 A. No.

4 Q. Has anyone from Dynamic ever told you that while  
5 the test cut was being performed the tailstock  
6 was knocked out of alignment?

7 A. I think I remember hearing that it had been hit.

8 Q. Who told you that?

9 A. I don't remember.

10 Q. Would it have been one of Dynamic's employees?

11 A. Probably.

12 Q. Did that individual explain to you what, if any,  
13 damage had happened to the tailstock as a result  
14 of it being hit?

15 A. No.

16 Q. Did you attempt to determine what, if anything,  
17 had happened to the tailstock as a result of it  
18 being hit?

19 A. No.

20 Q. Can you describe for me what you understand to be  
21 the problems in Dynamic's mind with respect to  
22 the Johnford lathe?

23 A. I believe that the number one problem is that the  
24 machine is incapable of moving in a straight line

1 plus or minus five-tenths over the stroke of the  
2 machine. I believe that the X axis is not  
3 capable of moving past center line with a  
4 five-inch diameter boring bar. I think the  
5 tailstock doesn't move close enough to the  
6 headstock.

7 Q. Anything else?

8 A. That's all that comes to mind.

9 Q. With respect to the last item, the tailstock not  
10 being able to be brought close enough to the  
11 headstock, my understanding is that prevents  
12 Dynamic from machining parts less than six feet;  
13 is that correct?

14 A. Yes.

15 Q. I also understand from Mr. Fonte that that -- he  
16 recognizes it is a repairable condition and he's  
17 not particularly concerned about it?

18 A. Yes.

19 MR. LITTLE: Objection to the  
20 characterization of his testimony.

21 Q. Do you believe that the -- do you have an  
22 understanding regarding whether the machine could  
23 be modified so that the tailstock could be  
24 brought within six feet of the headstock?



1 A. I believe it can be.

2 Q. And do you have an understanding that that would  
3 be a relatively minor modification of the  
4 machine?

5 A. I suppose it could be called minor.

6 Q. With respect to the inability of the machine to  
7 move in a straight line at plus or minus  
8 five-tenths --

9 A. We should correct that and it should be .0005.  
10 That's a terminology that's used in machine  
11 shops. Five-tenths. It's .0005.

12 Q. With respect to that perceived deficiency on the  
13 part of Dynamic, other than the information  
14 provided to you by Jack Grosberg that you  
15 previously testified to, do you have any other  
16 basis for reaching that conclusion?

17 A. That it's unable to do that?

18 Q. Yes.

19 A. I don't know of anything except for Jack's report  
20 that's told us that.

21 Q. With respect to your second item that the X axis  
22 is -- actually is unable to reach a center line  
23 of the X axis when using a five-inch boring  
24 bar --

1 A. Right.

2 Q. -- who has told you that the machine is unable to  
3 do that?

4 A. I believe Nick told me that.

5 Q. Nick Fonte?

6 A. Yes.

7 Q. Okay. Other than what Nick has told you with  
8 respect to the difficulty with the X axis, do you  
9 have any other information that supports your  
10 statement that the machine is incapable to reach  
11 a center line of the X axis when using a  
12 five-inch boring line?

13 A. Can you repeat that?

14 Q. Has anybody other than Nick Fonte told you that  
15 the machine is unable to reach a center line of  
16 the X axis when using a five-inch boring line?

17 A. That may be the fact. I mean, that may be the  
18 case but I'm not sure who else would have told me  
19 that or who else told me that. Usually when Nick  
20 tells me something like that, I --

21 Q. I mean, you have no reason to --

22 A. Exactly.

23 Q. -- dispute it?

24 A. I have no reason to dispute it, yeah.

1 Q. My only question is whether anybody else has told  
2 you that.

3 A. Not that I know of.

4 Q. Have you seen any test results which document  
5 that the machine is unable to reach the center  
6 line of the X axis?

7 A. No.

8 Q. During the course of the depositions taken so  
9 far, there has been testimony of a Mazak that's  
10 been acquired since this machine was -- since the  
11 Johnford lathe was delivered to Dynamic. Do you  
12 know whether the Mazak is capable of holding a  
13 positional accuracy within plus or minus .005?

14 A. I don't know that.

15 MR. LITTLE: It's not .005.

16 A. .0005.

17 Q. .0005. With respect to the Daewoo that's been  
18 acquired since the Johnford lathe was delivered,  
19 do you know whether that machine is capable of  
20 holding positional accuracy within .0005?

21 A. I do not.

22 Q. There has also been testimony earlier about a  
23 flowform machine that Jack Grosberg of Oxford  
24 Engineering has worked on recently.

1 A. Mm-hmm.

2 Q. Are you familiar with that machine?

3 A. Yes.

4 Q. Do you know what the tolerance of that machine  
5 is?

6 A. I do not.

7 Q. Do you know when that machine was delivered to  
8 Dynamic?

9 A. No, I don't. I don't know exactly when it was,  
10 no.

11 Q. Do you know whether Dynamic has experienced  
12 problems with that machine meeting the tolerance  
13 specifications?

14 A. I don't know that.

15 Q. Other than Jack Grosberg and DRW, do you know any  
16 other individuals or businesses that have  
17 inspected the Johnford lathe or performed any  
18 tests on the Johnford lathe?

19 A. No.

20 Q. Not aware?

21 A. Not that I'm aware of, no.

22 Q. All set. Thank you very much.

23 A. Thank you.

24

1 CROSS-EXAMINATION BY MR. LITTLE:

2 Q. I have a question. Purchase order number on this  
3 December purchase order was 13436.

4 A. Right.

5 Q. There was reference to that number in January on  
6 a subsequent document?

7 A. Mm-hmm.

8 Q. Can you explain to us how that number gets  
9 assigned and how it carries forward?

10 A. Basically the number is assigned -- I have a  
11 stack of purchase orders on my desk. They're  
12 just triplicate copies. I pick up the next one  
13 that's on my desk. That's the next one I use.  
14 The reason for assigning a purchase order is  
15 basically so that you can track the costs as they  
16 go through the system.

17 When we make -- when we want to cut a  
18 check to Norm or to anybody, we write a purchase  
19 order. That way that check can reference that  
20 purchase order. At the time when we're talking  
21 about buying this machine, we wanted to get  
22 things moving. We wanted to show good faith. We  
23 wanted -- I think Norm wanted to get this sale in  
24 the year. I can't speak for him but we wanted to

1 get things moving so we cut a purchase order. I  
2 think we made a down payment of \$30,000. And  
3 that purchase order number stays attached to that  
4 purchase throughout its life.

5 You know, it may undergo no revisions.  
6 It may undergo one revision, two revisions, three  
7 revisions but -- it maintains its identity  
8 through the whole procurement phase.

9 MR. LITTLE: Thank you.

10 MR. JACQUES: No further questions.

11 (Whereupon, the deposition was  
12 concluded at 5:02 p.m.)  
13  
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24

1 Excerpt from Rule 30(e):  
2 Submission to Witness; Changes; Signing.

3 When the testimony is fully transcribed,  
4 the deposition shall be submitted to the witness  
5 for examination and shall be read to or by  
6 him/her, unless such examination and reading are  
7 waived by the witness and by the parties. Any  
8 changes in form or substance which the witness  
9 desires to make shall be entered upon the  
10 deposition by the officer with a statement of the  
11 reasons given by the witness for making them.

12 \*\*\*\*\*

13 I, Kevin McGinley, have examined the above  
14 transcript of my testimony and it is true and  
15 correct to the best of my knowledge, information  
16 and belief. Any corrections are noted on the  
17 errata sheet.

18 Signed under the pains and penalties of  
19 perjury this day of , 2004.

20 -----  
21 Deponent's Signature

22 On this day of , 2004, before  
23 me, the undersigned notary public, personally  
24 appeared , proved to me through  
satisfactory evidence of identification, which  
were , to be the person whose name is  
signed on the preceding or attached document, and  
who swore or affirmed to me that the contents of  
the document are truthful and accurate to the  
best of his/her knowledge and belief.

25 -----  
26 Notary Public

27 My commission expires:

1 COMMONWEALTH OF MASSACHUSETTS  
2 ESSEX, SS.

3 I, Susan L. Prokopik, Registered Merit  
4 Reporter and Notary Public duly commissioned and  
5 qualified in and for the Commonwealth of  
6 Massachusetts do hereby certify that there came  
7 before me on the 20th day of September, 2004 the  
8 person hereinbefore named, who was satisfactorily  
9 identified by me and duly sworn to testify to the  
10 truth of his knowledge concerning the matters in  
11 controversy in this cause; that he was thereupon  
12 carefully examined upon his oath and his  
13 examination reduced to typewriting under my  
14 direction; and that the deposition is a true and  
15 accurate record of the testimony given by the  
16 witness.

17 I further certify that I am not  
18 interested in the cause of this action.  
19

20 SUSAN L. PROKOPIK, RMR, CRR  
21 (CSR #124893)

22 My commission expires:  
23 April 15, 2005  
24